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Supreme Court of the United States

October Term, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN,
Petitioners,

vs.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, A Corporation

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

We desire to supplement Petitioners' "Statement of the Case" by a further reference to the proceedings before the Illinois Commission. The record discloses that on July 20, 1943, Kopp filed an application for adjustment of claim with the Illinois Industrial Commission. (R. 148-151) Under the Illinois practice cases may be submitted to the Illinois Commission on what is known as a "settlement contract." That practice was followed in this case and on November 29, 1943, a settlement contract was filed with the Illinois Commission. (R. 186) On December 3, 1943, (R. 137, 163) a hearing was held before a member of the Illinois Commission at which time the question of approval

of the settlement contract and also the approval of a petition for lump sum payment filed by Kopp (R. 155-157) were considered. (R. 165) . The settlement contract was approved by the Illinois Commission on December 3, 1943. (R. 186) Under the Illinois law, the settlement contract became "in legal effect an award," upon its approval by the Illinois Commission.

A copy of the testimony taken and the proceedings had when the question of approval of the settlement contract was considered by the Illinois Industrial Commission is set forth in full in the Transcript of Record in this case at pages 164 to 168. It will be noted that the member of the Illinois Commission who heard the matter advised Kopp that he knew nothing about his rights in Wisconsin and could not say that he would be protected in Wisconsin and that Kopp replied that he would take his chances in Wisconsin. (R. 166-168)

ARGUMENT

Summary of Argument

A. The Wisconsin court decided the only Federal question of substance involved in this case in accord with the decision of this Court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430. Petitioners' contention that language used in the settlement contract renders the *Magnolia Case* inapplicable raises no Federal question of substance. No valid reason for departing from or re-examining the rule announced in the Magnolia Case is suggested by Petitioners.

B. The proceedings had in Illinois and the Illinois award resulting from approval of the Illinois settlement contract resulted in a final adjudication of Kopp's rights under the Illinois Act and the record in this case brings the case squarely within the rule announced in the *Magnolia Petroleum Company Case.*

C. The fact that in the Illinois settlement contract it was provided that "this settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" does not make the *Magnolia Case* inapplicable. This language did not constitute an agreement that Kopp had or after the Illinois proceedings would have any rights in Wisconsin. Wisconsin is required to give the same faith and credit to the Illinois award to which it is entitled in that state.

D. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is applicable even though this court stated in its opinion that it had no occasion to consider the effect to be given to the Texas award there involved if the Texas courts held that an award of compensation in another state would not bar an award in Texas. Illinois has not held that it would grant a second award. Any other result would do violence

to the full faith and credit clause and make it possible for the states to nullify this important constitutional provision.

E. The provisions in the Wisconsin Compensation Act for payment of $75 into the state treasury for a second injury fund do not constitute sufficient grounds for creation of an exception to the requirement of the full faith and credit clause.

A.

The Wisconsin Court Decided the Only Federal Question of Substance Involved In This Case In Accord With the Decision of This Court In Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, and No Valid Reason for Departing From or Re-examining the Rule Announced in That Case is Suggested by Petitioners.

We respectfully submit that the only Federal question of substance presented in the present case is whether the full faith and credit clause of the Constitution of the United States (Sec. 1 of Art. IV) has deprived Wisconsin of the power to deny that the Illinois award has the same binding effect on the parties in Wisconsin as it has in Illinois. Petitioners concede that the question was determined by this Court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, but seek to invoke the jurisdiction of this Court by reason of the claimed effect of the statement in the Illinois settlement contract that the settlement does not effect rights under the Wisconsin Act. As we will point out under section C of this brief it is our position that this language does not render the decision in the *Magnolia Case* inapplicable. How-

ever, it is further our position that Petitioners' contention raises no Federal question of public importance. Petitioners ask this Court to go back of the Illinois award and construe a contract. A construction of the language of the contract alone would not be sufficient but it would also be necessary for the court to consider all of the facts and circumstances peculiar to this case. We respectfully submit that this would require the Court to consider and decide questions which are not of public importance.

Petitioners suggest that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, should be re-examined and the limits of its application indicated. It is our position that the *Magnolia Case* is directly applicable in the present case. No definition of the limits of the application of the decision in that case is necessary in order to dispose of the present case. Petitioners' suggestion that this Court should define the limits of the application of the rule in the *Magnolia Case* amounts to a request to the Court to go beyond the record in the present case and consider questions not presented by the record. This cannot be done under the established principal governing the exercise of the jurisdiction of this Court that it will not decide constitutional questions unnecessarily or hypothetically and will not anticipate the decision of a constitutional question upon a record that does not present it.

Tennessee Publishing Co. v. American Nat. Bank, 299 U. S. 18.

Cincinnati v. Vester, 281 U. S. 439.

Moore Ice Cream Co. v. Rose, 289 U. S. 373.

In their brief (pages 17-18) Petitioners further suggest that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, should be re-examined because "it seems to oppose directly the generally accepted practice." Petitioners do not suggest that the decision is opposed to any "accepted practice" approved by this Court which is the final arbiter of the question presented. In order to avoid unduly extending this brief by the citation of many cases we call the Court's attention to the exhaustive annotation in 150 *American Law Reports, Annotated*, 431 in which the author cites many cases in support of his conclusion that the decision in the *Magnolia Petroleum Co. Case* is in accord with "the prevailing trend of recent cases."

We find no conflict between the *Magnolia Case* and *Williams v. North Carolina*, 325 U. S. 226, as suggested by Petitioners. In its opinion in the *Williams Case*, this Court gave full recognition to the rule announced in the *Magnolia Petroleum Co. Case* and was there only concerned with questions not presented in the present case because no claim of lack of jurisdiction on the part of Illinois to adjudicate Kopp's right to be paid workmen's compensation has been made by Petitioners.

B.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is Directly Applicable and the Record in This Case Brings the Case Within the Rule Announced in That Case.

We respectfully submit that the record in the present case presents a situation exactly similar to the situation presented in the *Magnolia Case*. By its terms the Illinois Compensation Act provides an exclusive remedy to an injured employee. Section 6 of the Illinois Act (Sec. 143 of Chapter 48, Ill. Rev. Stat. 1943) provides as follows:

> "No common law or statutory right to recover damages for injury or death sustained by an employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury. * * *."

Section 11 of the Illinois Act (Sec. 148 of Chapter 48, Ill. Rev. Stat. 1943) provides that:

> "The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or business enumerated in section three (3) of this Act. * * *."

Section 3 of the Illinois Act (Sec. 139 of Chapter 48, Ill. Rev. Stat. 1943) enumerates "The erection, maintaining, removing, remodeling, altering or demolishing of any

structure." At the time he was injured Kopp was doing mason work in connection with the erection of houses in Beloit, Wisconsin. (R. 134)

Under the Illinois law a settlement contract approved by the Industrial Commission is in legal effect an award.

Hartford Accident & Indemnity Co. v. Industrial Comm., 320 Ill. 544, 151 N. E. 495.

Kopp not only obtained what in Illinois was in legal effect an award but he also applied for and obtained an order approving a lump sum settlement. (R. 155, 161.) The "Lump Sum Settlement Order" (R. 161-162) is of importance in this case because under the Illinois law a lump sum settlement prevents the employee from thereafter obtaining a review of an agreement or award fixing the amount of his compensation. *Michelson v. Industrial Commission*, 375 Ill. 462, 31 N. E. 2d 940. In any event it is admitted that Kopp did not commence an action to review the decision of the Illinois Commission approving the settlement contract. (R. 141) It should also be noted that awards of the Illinois Commission are res judicata in that state.

Centralia Coal Co. v. Industrial Comm., 297 Ill. 451, 130 N. E. 727.

Stromberg Motor Device Co. v. Industrial Comm., 305 Ill. 619, 137 N. E. 462.

There can be no question but what the Illinois proceedings and award resulted in a final adjudication of Kopp's right to compensation for his injuries under the Illinois Workmen's Compensation Act and prevented any further

claim of any kind in Illinois. No claim that Kopp has any further rights in Illinois is made by Petitioners. This, we submit, brings the case squarely within the rule announced in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430.

C.

The Decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is Not Inapplicable Because of Language In the Illinois Settlement Contract Relating to Rights Under the Wisconsin Compensation Act.

In their brief in support of their petition for a writ of certiorari Petitioners have taken the position that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because the Illinois award was "based" on a settlement contract which contained the following provision: "This settlement does not affect any rights that applicant (Kopp) may have under the Workmen's Compensation Act of the State of Wisconsin." (R. 152) As we have stated in section A of this brief it is our position that this contention raises no Federal question of substance. It is further our position that Petitioners' position has no merit in any event. The effect of the language quoted from the Illinois settlement contract was referred to and considered by the Wisconsin court in its opinion. (R. 184-185) It should be noted, however, that the precise question now raised by Petitioners was neither considered nor decided by the Wisconsin court.

In their brief (page 12) Petitioners argue that the approved settlement contract became in legal effect an

award reserving rights under the Wisconsin Compensation Act. It will be noted, however, that the language relied upon by Petitioners refers only to rights that Kopp "may" have under the Workmen's Compensation Act of Wisconsin. Certainly the language cannot be construed as an acknowledgment or agreement that Kopp then had or in the future would have any rights under the Wisconsin Act. When this contract was executed the parties were interested only in disposing of Kopp's rights under the Illinois Act. This is plain from the last paragraph of the contract wherein Kopp agreed to settle and adjust all claims under the Workmen's Compensation Act of Illinois for a stipulated amount. (R. 153) When the contract was submitted to the Illinois Commission for approval, the Illinois Commission was concerned only with Kopp's rights under the Illinois Act. The Commissioner who heard the matter so advised Kopp and specifically told him that he did not know whether he would have any further rights in Wisconsin after his case was "closed out in another state." Kopp then replied that he would "take chances on Wisconsin." (R. 163-168) It is obvious that the Illinois Commission had no power to adjudicate Kopp's rights under the Workmen's Compensation Act of Wisconsin and no power to limit the requirement of the full faith and credit clause that its award be given the same res judicata effect in Wisconsin to which it is entitled in Illinois.

We submit that a complete answer to Petitioners' argument is found in the fact that Wisconsin is required to give the same faith and credit to the Illinois proceedings and award as they have by law or usage in the courts of

Illinois where they are held to be a full and final adjudication of Kopp's right to compensation for his injuries.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 at 437-438.

Adam v. Saenger, 303 U. S. 59 at 62.

D.

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is Applicable Even Though This Court Stated In Its Opinion That It Had No Occasion to Consider Effect To Be Given To Texas Award If the Texas Courts Held That An Award of Compensation In Another State Would Not Bar An Award In Texas.

It is true that Illinois has no statute similar to the Texas statute which provides that a compensation award may not be had in Texas if the employee has claimed and received compensation for his injury under the laws of another state. (See reference to this statute 320 U. S. at page 435.) However, it is also true that Illinois has never held that an award of compensation in another state would not bar a second award in Illinois. In the absence of such holding by Illinois we submit that there is no merit to Petitioners' argument under "Point B" in their brief. (Pages 14-15) In addition we call attention to the fact that Illinois has recognized the exclusiveness of the remedy afforded by the compensation law of another state. In *Cole v. Industrial Commission*, 353 Ill. 415, 187 N. E. 520, the Illinois court said:

"The contract of employment herein having been entered into in the state of Indiana between parties

who were subject to the terms of the Indiana Compensation Act, the provisions of the act for an exclusive remedy under it must prevail."

We respectfully submit that every reason which impelled this Court to hold in the *Magnolia Case* that a second recovery could not be had in Louisiana for the same injury for which the employee had previously received compensation in Texas would have applied with equal force even if Texas had permitted a second recovery. The Wisconsin court so held in this case. (R. 185) Any other result would do violence to the full faith and credit clause and make it possible for the states to nullify this important constitutional provision by statutes or decisions of its courts.

E.

The Provisions In the Wisconsin Compensation Act for Payment of $75 Into the State Treasury for a Second Injury Fund Do Not Constitute Sufficient Grounds for Creation of An Exception To the Requirement of the Full Faith and Credit Clause.

It will be noted that sub-sec. (2) of sec. 102.59, Wisconsin Statutes, 1943, provides that "in case of * * * the total impairment of a * * * eye, the employer shall be required to pay seventy-five dollars into the state treasury." (See other statutes relating to the so-called second injury fund quoted at page 16 of Petitioners' brief.) This statute, therefore, only provides for a payment into the state treasury where there is a total impairment of an eye. No finding of total impairment of eye has been made in

this case. No medical testimony was presented at the hearing before the Wisconsin Industrial Commission. (R. 122) That commission found that no removal of the cataract had been attempted, "that the ultimate impairment of vision, if such removal were attempted, is unknown," and reserved the question of payment into the state fund until determination of the permanent impairment of vision. (R. 122-123)

This Court has stated that actual exceptions to the requirement of the full faith and credit clause "have been few and far between." *Williams v. North Carolina*, 317 U. S. 287 at pages 294-295. Petitioners have cited no cases in support of their contention that the claimed interest of the State of Wisconsin in this case constitutes sufficient grounds for creation of an exception to the full faith and credit clause and we have found none. We respectfully submit that in no event could a mere possibility that Wisconsin may have an interest to the extent of seventy-five dollars be relied upon as creating an exception to this clause. Here again Petitioners ask this Court to grant their petition in order to consider a question that does not now exist and may never come into existence.

At page 17 of their brief Petitioners suggest that the problem under the full faith and credit clause is to accommodate the conflicting interests of the two states. If this be true, we submit that the interest of Illinois arising from its responsibility to furnish relief and care to residents of its state who are incapacitated by injuries is far greater than any interest that Wisconsin could have by reason of its requirement that in selected cases a contribution must be made to its second injury fund.

CONCLUSION

It is, therefore, respectfully submitted that this case is not a proper one for review by certiorari in this court, and that the petition for a writ of certiorari should be denied.

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